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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,530

02/24/2005

Hermes Reyes Cuadros

05019

7076

23338 7590 05/12/2008  
DENNISON, SCHULTZ & MACDONALD  
1727 KING STREET  
SUITE 105  
ALEXANDRIA, VA 22314

EXAMINER

LIU, JONATHAN

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

05/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/525,530	<b>Applicant(s)</b> REYES CUADROS, HERMES	
	<b>Examiner</b> JONATHAN J. LIU	<b>Art Unit</b> 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5, 7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 7, 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. In view of the appeal brief filed on 4/28/2008, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Patricia L Engle/

Supervisory Patent Examiner, Art Unit 3673.

***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Colombia on 9/26/2002. It is noted, however, that applicant has not filed a certified copy of the CO 02075481 application as required by 35 U.S.C. 119(b). Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sookne (US 3,813,715) in view of Blecker et al. (US 3,255,469), and in further view of Freeman (US 2,975,437). Sookne teaches a symmetric mattress comprising a central metallic spring unit (n), having opposite faces on each of which is disposed, in sequence: a first sisal layer (m); a natural cotton layer (k); and an outer textile padded layer (g) attached to a foam layer (h). Although Sookne does not teach wherein the foam layer is of natural latex or rubber nor wherein the layer is perforated, such materials are well known within the art of cushions/mattresses and are routinely interchanged with each other. Nonetheless, Blecker et al. teach a multiple layer cushion comprising a perforated rubber layer (18; col. 2, lines 23-27). Sookne and Blecker et al. are analogous because they are from the same field of endeavor, i.e. cushions/mattresses. It would have been obvious to modify the foam layer of Sookne to be of rubber and have perforations as taught by Blecker et al. The motivation would have been to permit a freer flow of air through the mattress/cushion (Blecker: col. 3, lines 45-46). Therefore, it would have been obvious to modify the invention to Sookne as specified in claim 1. With regards to the limitation wherein the outer textile padded layer is *sewn* to the natural latex or rubber layer, such limitation is considered as a

process limitation. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” [citations omitted] See MPEP 2113. Accordingly, the outer textile padded layer of Sookne is attached to the foam layer (e.g. the natural latex or rubber layer as modified) and thereby meets the limitations of the claim. While Sookne *does* teach a layer (i) between the natural cotton layer and the natural latex/rubber layer (as modified), Sookne does not teach wherein said layer is sisal. Freeman teaches a mattress comprising two sisal pads (20, 21 or 22, 23) on either side of a metallic spring core, to provide a relatively soft feeling mattress (col. 1, lines 30-32). Sookne and Freeman are analogous because they are from the same field of endeavor, i.e. cushions/mattresses. It would have been obvious to one of ordinary skill in the art to modify layer (i) of Sookne to be sisal, in order to provide a softer feeling mattress as well as provide additional cushioning. Therefore, it would have been obvious to modify the invention to Sookne as specified in claim 1.

With regards to claim 7, the components *necessarily* make up a ventilated unit dissipating heat, with an ergonomic fitting made up by the natural latex and the metallic spring unit in combination. It is noted that while Sookne as modified does not teach wherein layer (h) is *natural latex* – it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a natural latex layer (with

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perforations – as taught by Blecker et al.), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice [citations omitted].

In regards to claim 9, Blecker et al. teach a second perforated natural latex or rubber layer (Blecker: e.g. 20). It would have been obvious to include this second layer with the invention to Sookne in order to provide additional cushioning.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN J. LIU whose telephone number is (571)272-8227. The examiner can normally be reached on Monday through Friday, 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia L Engle/  
Supervisory Patent Examiner,  
Art Unit 3673

/J. J. L./  
Examiner, Art Unit 3673